

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
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Consumer Protection in the Broadband Era)	WC Docket No. 05-271
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INITIAL COMMENTS OF THE

**NATIONAL CONSUMER LAW CENTER
on behalf of Texas Legal Services Center
Ohio Community Computing Network
and Cleveland Digital Vision, Inc.**

APPALACHIAN PEOPLE’S ACTION COALITION

DISABILITY RIGHTS ADVOCATES

**EDGEMONT NEIGHBORHOOD COALITION,
represented by Advocates for Basic Legal Equality**

LATINO ISSUES FORUM

January 17, 2006

I. Introduction

The Federal Communications Commission (“FCC” or “Commission”) released a Report and Order and Notice of Proposed Rulemaking on September 23, 2005 regarding a new regulatory framework for broadband Internet access services offered by wireline facilities-based providers. On October 17, 2005, the Federal Communications Commission (“Commission”) published in the *Federal Register* a request for comments on whether the Commission, using its ancillary power under Title I, should impose non-economic regulation as a matter of public policy on broadband Internet access service in the areas of consumer privacy, unauthorized changes to service, truth-in-billing, network outage reporting, discontinuance of service, rate averaging requirements, the corresponding ability of consumers to take advantage of Commission avenues for resolution of these consumer protection issues and other areas of consumer protection.¹ These Initial Comments are filed jointly by the National Consumer Law Center, on behalf of Texas Legal Services Center, the Ohio Community Computing Network and Cleveland Digital Vision, Inc.; Appalachian People’s Action Coalition; Disability Rights Advocates; Edgemont Neighborhood Coalition, represented by Advocates For Basic Legal Equality, and the Latino Issues Forum (Collectively The “Consumer Groups”).

¹70 Fed. Reg. 60259 – 60271 (Oct. 17, 2005).

A. Interest of the Commenting Parties

National Consumer Law Center is a non-profit corporation organized under the laws of the Commonwealth of Massachusetts in 1971. Its purposes include representing the interest of low-income people and enhancing the rights of consumers. Throughout its history, NCLC has worked to make utility services (telephone, gas, electricity, and water) more affordable and accessible to low-income households.

Texas Legal Services Center is a statewide Legal Aid program that sponsors the TexasLawHelp.org website that provides Texans with free information concerning their legal rights. Pursuant to Texas law, TLSC established a Collaborative Community Network with the State Bar and public libraries known as the Partnership for Legal Access to provide ensure consumers have free access to consumer-oriented legal information.

The Ohio Community Computing Network, established in 1995, is a member-driven organization supporting community technology to promote full participation in a digital world. OCCN is committed to ensuring that every Ohioan can make full use of modern computing and networking technology for personal and community empowerment and enrichment. OCCN is a nationally recognized advocate and support organization for community technology. OCCN continues to offer all of its valuable services while also

advocating for Community Technology Centers (CTCs) both at the state and national level. OCCN is now located in the State Library of Ohio operating with a small, dedicated staff and a governing board that includes representation from various statewide organizations, local leaders from around the state, and community technology center coordinators. We currently have 46 affiliate CTC members and maintain a database of over 200 community technology programs in Ohio.

Cleveland Digital Vision is a nonprofit membership organization of local community technology programs and other organizations, committed to "advocacy and support for community efforts toward universal computer literacy, access to computer and network technologies, and expanded information technology employment opportunities for all residents of Cleveland and surrounding communities."

APPALACHIAN PEOPLE'S ACTION COALITION (APAC) is a nonprofit membership corporation with over 400 mostly low-income residential consumers in southeastern (Appalachian) Ohio. It operates a small thrift furniture store and business office in Athens, Ohio, and advocates for low-income residents of Appalachian Ohio on a wide range of consumer, public benefits, economic development and public utility issues. It has frequently intervened in gas, electric and telecommunications proceedings before the Public Utilities Commission of Ohio (PUCO).

Disability Rights Advocates (DRA) is a non-profit organization established in 1993 to engage in public interest litigation and advocacy to protect the rights of people with disabilities. DRA's mission is to ensure that people with disabilities are no longer treated as second class citizens. DRA has represented the interest of people with disabilities before the California Public Utilities Commission as well as in state and federal court to ensure that products and services offered by all levels of government and by private businesses are accessible.

The Edgemont Neighborhood Coalition (Edgemont) is a community organization based in the Edgemont neighborhood of Dayton Ohio. That neighborhood is primarily low income and African American. Edgemont has long been concerned about access to telecommunications services and the need to make sure that people in the Edgemont neighborhood are able to affordably access the internet. It operates a community computer center and its experience has caused it to believe that broadband service is now necessary to make full beneficial use of the internet. Edgemont recently filed testimony to that effect in several cases before the Public Utilities Commission of Ohio.

Advocates for Basic Legal Equality, Inc. (ABLE), is a non-profit law firm that provides high quality legal assistance in civil matters to eligible low-income individuals in western Ohio.

Latino Issues Forum is a non-profit public policy and advocacy institute dedicated to advancing new and innovative public policy solutions for a better, more equitable and prosperous society. Established in 1987, LIF's primary focus is on the broader issues of access to higher education, economic development, health care, citizenship, regional development, telecommunications issues and regulatory issues. LIF addresses public policy issues from the perspective of how they will affect the social and economic future of the Latino community.

B. Summary

The Consumer Groups strongly urge the FCC to use its ancillary jurisdiction in Title I of the Telecommunications Act² to adopt non-economic regulation of broadband Internet services. The Consumer Groups initial comments focus on three issues of great importance to us:

² The Telecommunications Act gives the Commission subject matter jurisdiction over “all interstate and foreign communications by wire or radio . . . and . . . all persons engaged within the United States in such communications (47 USC § 152(a)). The Commission’s broadband services consumer protection obligations would be reasonably ancillary to the Commission’s responsibility to sections 222 (customer privacy), 255(disability access), and 258 (slamming and truth-in-billing), among other provisions. *See* FCC-05-150, Rept and Order and Notice of Proposed Rulemaking (adopted August 5, 2005), para 110.

- The Commission must take proactive and meaningful steps to protect consumers from cramming, slamming, misleading and confusing bills, and fraudulent practices and abuses.
- The Commission must provide and not preclude meaningful avenues of redress regarding the practices listed above. The Consumer Groups urge the Commission to work with the states to address these abusive practices. The Consumer Groups also urge the Commission provide an accessible, user-friendly means of filing complaints against their broadband service provider and to track such complaints in order to identify emerging problems.
- Broadband services must contribute to the Universal Services Fund (USF) and, broadband services must be reevaluated and considered a part of universal service.

The Consumer Groups are also concerned about the protection of consumer privacy and concur with NASUCA's comments on consumer privacy protections.³

The Consumer Groups believe the Commission has the authority and duty to act in the public interest by adopting consumer protections regarding slamming, accurate and clear bills, abusive and fraudulent practices. These

³ See Comments of the National Association of State Utility Consumer Advocates, In the Matter of Consumer Protection in the Broadband Era, Docket WC Docket No. 05-271.

protections will only be as meaningful as the ability of consumers to have these rights enforced. Thus, the Consumer Groups feel strongly that the Commission must provide accessible meaningful and useable avenues of redress. The Commission must work closely with the states to protect consumers of broadband Internet access services from abusive and fraudulent practices. In addition to being able to turn to their state agencies, consumers should be able to easily file complaints about their broadband services providers. These complaints must be tracked in order to identify abusive actors and practices.

Finally, broadband Internet access services are more commonplace and we are in a new era where plain old telephone service (POTS) is an inferior mode of communications. Broadband Internet access service is becoming an essential means of participating in e-commerce (e.g., online banking and shopping); staying connected with family, friends, members of the community; participating in civic matters (e.g., contacting representatives, commenting in local, state and federal agency proceedings); competitively participating in the marketplace (e.g., sending large files quickly and reliably, telecommuting), and providing access to communications services access for people with disabilities (e.g., those with limited mobility, vision impairment, total or acute loss of hearing). As the use of broadband Internet services becomes the mainstream form of communicating, those left with Plain Old Telephone Service (POTS) will not have the capability of fully

engaging in society. Thus the Broadband services need to contribute to the Universal Service Fund and, as the use of broadband services becomes more commonplace and necessary to fully participate in society and the marketplace, the definition of universal services must be expanded to include broadband services.

II. THE FCC SHOULD USE ITS ANCILLARY JURISDICTION UNDER TITLE I TO PROTECT BROADBAND SERVICE CONSUMERS

A. The Commission must adopt consumer protection regulations

Broadband service consumers must be protected from slamming, cramming, misleading and hard-to-read bills and other deceptive and abusive billing practices. The Commission must not leave it to the marketplace to provide these consumer protections. That is tantamount to the fox guarding the henhouse. Instead, the Commission's adoption of protective regulations with uniform disclosure practices would foster greater consumer confidence in the broadband marketplace and increase competitive shopping.

The unauthorized switching of broadband service providers (slamming) is a deceptive and abusive practice that the Commission must not leave for the marketplace to provide consumer protections. The Commission must adopt rules that would require the verification of the customer's authorization to switch service providers. The Commission should also incorporate similar protections available in the telephone slamming rule for abusive and deceptive letters of agency authorizing the switching of service providers (e.g., LOA can't be combined with an inducement on the same page,

screen or webpage; language of LOA must be clear and readable; language requirements).⁴

The FCC has noted in its Truth-in-Billing proceeding that, “As competition evolves, the provision of clear and truthful bills is paramount to the efficient operation of the marketplace.”⁵ Ensuring consumers receive clear and accurate bills, however, has proven elusive for the telephone service industry. In the rapidly evolving offerings of broadband services, the opportunity for confusing, misleading and fraudulent billing is great. Cramming, deceptive advertising, sloppy double billing and loopholes in adhesion contracts should not be deemed acceptable business practices by any telecommunications provider. The marketplace has little incentive to ensure better billing practices. The FCC must step in and promote a fair business practices by adopting strong consumer protections against these abuses.

B. The Commission must provide meaningful redress and enforcement

The adoption of any consumer protection rules is toothless without an avenue of meaningful redress and the threat of enforcement. The burden should not be placed on the harmed consumers when seeking redress. Protections similar to those in the telephone slamming rule that puts the onus on the bad actor, and not the victim should be provided in

⁴ 47 C.F.R. §64.1130.

⁵ Truth in billing, 2nds Report & Order, para. 17.

the broadband context.⁶ The Consumer Groups concur with NASUCA's comments on the need for the Commission to closely track broadband service complaints. This is vital in addressing abusive actors or practices in the emerging broadband era.

The Consumer Groups also believe that state and federal resources are both vital to protecting consumers from the abusive and fraudulent practice discussed above. The Consumer Groups urge the Commission to coordinate efforts with the states to provide consumers a range of protections. Consumer Groups note that while many consumers do not know where to turn for enforcement of consumer telecommunications protections, state agencies are perceived by consumers as the point of entry into the enforcement of telecommunications rights more often than the FCC.⁷

C. The Commission should ensure all Americans, including low-income consumers have access to broadband services

1. Broadband Services Should Contribute to the USF

The Universal service principles in the Telecommunications Act of 1996 states that the Joint Board and the Commission "Shall base policies for the preservation and advancement of universal service on the following principals . . . (4) All providers of telecommunications services should

⁶ 47 C.F.R. § 64.1140.

⁷ Cf., AARP Public Policy Institute Data Digest No. 89, "Understanding Consumer Concerns About the Quality of Wireless Telephone Service" Fig. 7 (While 46 % of cell phone users reported not knowing whom to contact regarding a billing or service problem if their provider could not resolve the problem to their satisfaction, 5% stated they'd turn to a state agency and 4% said they'd turn to the FCC).

make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.⁸ Section 254(d) of the

Telecommunications Act of 1996 requires that:

“every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. . . . Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”

The FCC has the authority to assess contributions on

“telecommunications,” which underlies telecommunications services and information services and, in the public interest and it should require broadband services to contribute to universal services. The Consumer Groups note that the value of the broadband services increases with the number of users connected to those services and that broadband services also derive benefit from the last mile connectivity to the consumers, PSTN. Thus they should be required to contribute to the USF.

2. Broadband services should be included in USF, especially for low-income households

The definition of universal service in Section 254 of the Telecommunications Act of 1996 states in part that “Universal service is an evolving level of telecommunications services that the Commission shall

⁸ 47 U.S.C. § 254 (b)(4).

establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”⁹ Broadband Internet access service is becoming an essential means of participating in e-commerce (e.g., online banking¹⁰ and shopping); staying connected with family, friends, members of the community; participating in civic matters (e.g., contacting representatives, commenting in local, state and federal agency proceedings); competitively participating in the marketplace (e.g., sending large files quickly and reliably, telecommuting), and providing access to communications services access to people with disabilities (e.g., those with limited mobility, vision impairment, total or acute loss of hearing), acquiring health information¹¹.

As the use of broadband Internet services becomes the mainstream form of communicating, those left with Plain Old Telephone Service (POTS) will not have the capability of fully engaging in society. Recent national studies¹² show that low-income adults and those with little education are much less likely to have Internet access at home than those with higher income or education. There is also racial disparity with access with African

⁹ 47 U.S.C. § 254 (c).

¹⁰ According to the Pew Internet & American Life Project. 44% of Internet users and one quarter of adults use online banking.

¹¹ Healthy People 2010 is a US Health and Human Services initiative to see that individuals and health care providers use information strategically to improve health. The goals of the initiative include Internet access and information literacy skills necessary to find, evaluate and use health information. Office of Disease Prevention and Health Promotion, US Dept. of Health and Human Services. 2000. Healthy People 2010. www.healthypeople.gov/document/html/volume1

¹² Mossberger, Karen, Caroline Tolvert & Mary Stansbury, 2003. Virtual Inequality: Beyond the Digital Divide. Georgetown University; Pew Internet & American Life Project. 2005. Demographics of Internet user available at www.pewinternet.org/trends; US Census. 2001. American Fact Finder. Available at www.census.gov/factfinder.

Americans and Latinos much less likely to have Internet access at home. Additionally, people with disabilities have the lowest level of Internet access of any demographic group.¹³

The growing Digital Divide has severe consequences for low-income and disabled consumers.¹⁴ The Digital Divide is not limited to merely accessing a computer and having dial-up-access to the Internet. Today, government websites require the use of broadband access to download websites with graphics and forms. There is also a trend toward using the Internet for performing job searches and researching medical information online which requires broadband access.¹⁵ A program director for a community based organization in Appalachian Ohio regarding the importance of broadband internet service in Appalachian Ohio describes what broadband services means for an area of the country that does not have the infrastructure beyond dial-up capacity:

In this changing information age, where job applications and government forms are only available on-line, citizens in Appalachian Ohio need to be made aware of how essential these services are for their livesToday, access to advanced telecommunication services is essential to effective communication, quality of life and even democratic participation. Universal, high speed communication networks can impact health care, education, and training opportunities for

¹³ See Stephen Kaye, *Disability Watch, The Status of People with Disabilities in the United States*, Vol. 2, A Report by Disability Rights Advocates, 2001, at page 87.

¹⁴ For people with disabilities, the Digital Divide created by lack of Internet access is exacerbated by websites that do not allow use of adaptive technology, rendering even those with access to the Internet less able to conduct transactions and otherwise benefit from online technology.

¹⁵ Direct Testimony and Exhibits of Angela Stuber, PUC of Ohio, In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corporation for Consent and Approval of a Change of Control, Case No. 05-269-TP-ACO (July 2005) p.5.

all ages, enable independent living services for people with disabilities, create job opportunities improve accessibility to government services, and reduce isolation of our rural communities.¹⁶

As a matter of serving the public interest, the broadband services need to contribute to the Universal Service Fund, and as the use of broadband services becomes more commonplace and necessary to fully participate in society and the marketplace, the definition of universal services must be expanded to include broadband services. Without these changes, there low-income, disabled and rural consumers will lose their ability to fully participate in this society.

For the reasons presented above, the Consumer Groups urge the Commission to begin a proceeding to adopt the Broadband Consumer Protections discussed above.

Respectfully Submitted,

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¹⁶ Direct Testimony and Exhibits of Sue Shipitalo, presented on behalf of Edgemont Neighborhood Coalition and the Appalachian People's Action Coalition, PUC of Ohio, In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corporation for Consent and Approval of a Change of Control, Case No. 05-269-TP-ACO (July 2005) p.7.

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